

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

MARCHELO D. GARRETT,

Petitioner

v.

C-1-05-102

ERNIE MOORE,

Respondent

ORDER

This matter was referred pursuant to 28 U.S.C. § 636 to the United States Magistrate Judge for consideration and report on the Petition for Writ of Habeas Corpus filed by the petitioner pursuant to 28 U.S.C. § 2254. The matter is before the Court upon the Report and Recommendation of the Magistrate Judge (doc. no. 8) recommending that the Petition for Writ of Habeas Corpus be dismissed to which neither party has objected.

Upon a *de novo* review of the record, the Court finds that the Magistrate Judge has accurately set forth the applicable law and has properly applied it to the particular facts of this case. Accordingly, in the absence of any objection by petitioner, this Court accepts the Report as uncontroverted.

Accordingly, the Court accepts the factual findings and legal reasoning of the Magistrate Judge and hereby **ADOPTS AND INCORPORATES BY REFERENCE** into this Order his Report and Recommendation dated November 21, 2006. The Petition for Writ of Habeas Corpus is, therefore, **DENIED WITH PREJUDICE**.

A certificate of appealability shall not issue with respect to the claims for relief, which this Court has concluded are waived and thus barred from review on procedural grounds, because "jurists of reason" would not find it debatable whether this Court is correct in its procedural ruling. See *Slack v. McDaniel*, 529 U.S. 473, 484–85 (2000)¹. A certificate of appealability also shall not issue with respect to petitioner's remaining claim challenging the denial of his requests for disclosure of the grand jury transcript, which has been addressed on the merits herein, because petitioner has failed to make a substantial showing of the denial of a constitutional right in that ground for relief. See 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). Accordingly, a certificate of appealability shall not issue.

With respect to any application by petitioner to proceed on appeal *in forma pauperis*, the Court CERTIFIES pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of any Order adopting this Report and Recommendation would not be taken in "good faith," and therefore DENIES petitioner leave to appeal *in forma pauperis* upon a showing of financial necessity. See Fed. R. App. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (1997).

This case is **DISMISSED AND TERMINATED** on the docket of this Court.

IT IS SO ORDERED.

s/Herman J. Weber
Herman J. Weber, Senior Judge
United States District Court

¹ Because this Court finds that the first prong of the two-part **Slack** standard has not been met in this case, it need not address the second prong of **Slack** as to whether or not "jurists of reason" would find it debatable whether petitioner has stated a viable constitutional claim in any of his "waived" grounds for relief. See **Slack**, 529 U.S. at 484.